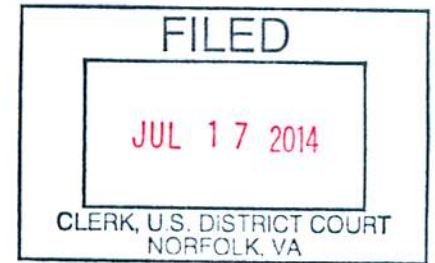


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division



INLINE CONNECTION CORP.,

Plaintiff,

v.

Civil Action No. 2:05cv205

VERIZON INTERNET SERVICES, INC., et al.,

Defendants.

**OPINION AND ORDER**

This matter is before the Court upon the Verizon OTC Defendants' ("Defendants") Bill of Costs, Doc. 91. For the reasons stated herein, the Court **DENIES** the Bill of Costs.

**I. Factual Background and Procedural History**

This patent case was originally filed in 2005 against twenty-five corporations. Doc. 1. On December 5, 2005, this Court issued an Order transferring nine of the defendants to the United States District Court for the District of Delaware, and this action with the remaining sixteen defendants was stayed pending resolution of the action in Delaware. Doc. 55.

On April 16, 2014, the Clerk's Office sent a notice to the parties, requesting them to file a status report. Doc. 82. In their submissions in response, the parties agreed that Plaintiff no longer possessed standing. Defendants requested that this Court dismiss the case with prejudice, enter judgment in their favor, and award them costs and attorneys' fees. Doc. 83 at 3. Plaintiff requested that the court dismiss the action without prejudice, or in the alternative, maintain the stay. Doc. 88 at 2. By Order dated May 22, 2014, the Court removed the stay and dismissed the action without prejudice. Doc. 90. The Court did not rule on Defendants' request for attorneys'

fees, instead requiring Defendants file a formal motion if they desired such relief.<sup>1</sup> Id.

On June 2, 2014, Defendants filed a Bill of Costs, requesting that the Court assess \$27,593.94 in costs against Plaintiff. Doc. 91. Plaintiff filed its objection on June 13, 2014, arguing that Defendants were not a prevailing party, or in the alternative, that many of the assessed costs are not properly taxable. Doc. 94. Defendants filed their response on June 19, 2014. Doc. 96.

## II. Analysis

"Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party." Fed. R. Civ. P. 54(d)(1). In a patent case, the Court applies Federal Circuit law to determine who the prevailing party is. Manildra Mill. Corp. v. Ogilvie Mills, Inc., 76 F.3d 1178, 1181 (Fed. Cir. 1996). "To be a prevailing party, one must receive "at least some relief on the merits." Shum v. Intel Corp., 629 F.3d 1360, 1367 (Fed. Cir. 2010). This relief must alter "the legal relationship of the parties." Inland Steel Co. v. LTV Steel Co., 364 F.3d 1318, 1320 (Fed. Cir. 2004) (quoting Former Employees of Motorola Ceramic Prods. v. United States, 336 F.3d 1360, 1364 (Fed. Cir. 2003)).

In this case, Defendants are not a prevailing party because the Court dismissed the action for want of jurisdiction. A dismissal for lack of jurisdiction is not a dismissal on the merits. See Media Techs. Licensing, LLC v. Upper Deck Co., 334 F.3d 1366, 1370 (Fed. Cir. 2003) ("lack of standing precludes a ruling on the merits"); Fed. R. Civ. P. 41(b) ("Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction ... operates as an adjudication on the merits.").

A sister court in this Circuit has similarly held in a patent case that a dismissal without

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<sup>1</sup> The Court's Order also made no mention regarding the taxation of costs.

prejudice for failure to prosecute did not confer prevailing party status. Robinson v. Bartlow, No. 3:12cv24, 2014 WL 2468817, at \*4 (W.D. Va. June 3, 2014). As in Robinson, the Court took no position on the merits of the case. Thus, Defendants are not a prevailing party in this matter.

**III. Conclusion**

Accordingly, the Court **DENIES** the Bill of Costs in its entirety.

The Clerk is **REQUESTED** to send a copy of this Order to all counsel of record.

It is so **ORDERED**

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*/s/*  
Henry Coke Morgan, Jr.  
Senior United States District Judge  
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HENRY COKE MORGAN, JR. *ACM*  
SENIOR UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

Date: July 17<sup>th</sup>, 2014